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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A

I. INTRODUCTION

1. At its forty-ninth session, the Commission on Human Rights adopted resolution 1993/2 A, of 19 February 1993, entitled "Question of the violation of human rights in the occupied Arab territories, including Palestine".

2. In paragraph 4 of that resolution, the Commission decided to appoint a special rapporteur with the following mandate:

> "(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;
>
> "(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;
>
> "(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories."

3. At its 44th plenary meeting, on 28 July 1993, the Economic and Social Council adopted decision 1993/253, in which it approved Commission resolution 1993/2 A.

4. On 13 September 1993, the Chairman of the Commission on Human Rights appointed Mr. René Felber (Switzerland) as Special Rapporteur. Mr. Felber presented reports to the Commission at its fiftieth and fifty-first sessions (E/CN.4/1994/14 and E/CN.4/1995/19 respectively). After presenting his second report to the Commission, Mr. Felber resigned as Special Rapporteur on 9 February 1995.

5. In a letter dated 18 April 1995, the Chairman of the Commission on Human Rights at its fifty-first session, after consultations with the Bureau, informed the Assistant Secretary-General for Human Rights of his decision to appoint Mr. Hannu Halinen (Finland) as Special Rapporteur. The appointment of the Special Rapporteur has been brought to the attention of the Government of Israel by the Chairman of the Commission on Human Rights.

6. In keeping with the general philosophy guiding the approach of the special rapporteurs of the Commission on Human Rights to the discharge of their mandates, the Special Rapporteur did not see his role as accusatory, but rather as having the objective of establishing a meaningful and constructive dialogue with all the parties concerned in overcoming problems having to do with issues relating to his mandate.

7. In embarking on his mandate, the Special Rapporteur was aware of the important political developments in the peace process between Israel and the Palestine Liberation Organization (PLO) that were initiated by the signing of the Declaration of Principles on Interim Self-government Arrangements in Washington on 13 September 1993. The political process was enhanced further by the signing in Cairo, on 4 May 1994, of the Israel-PLO Agreement on the Gaza Strip and Jericho Area, which was followed by the establishment of the Palestinian Authority there. The signing on 28 September 1995 in Washington of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip broadened Palestinian self-government in the West Bank and marked the end of the first stage of negotiations between Israel and the PLO. In pursuance of the Interim Agreement, elections for the Palestinian Council were held on 20 January 1996.

8. In a letter addressed to the Minister for Foreign Affairs of Israel, the Special Rapporteur stated that he believed that the exercise of his mandate should help to contribute to the peace process that began with the signing of the historic agreements in Washington and Cairo. In order to carry out his mandate in the most impartial and objective manner, he thought it extremely important to know the views of the Israeli authorities in order to enable him to present a comprehensive report to the Commission on Human Rights based on the most up-to-date and accurate information available. As an initial step, he requested to meet with the Permanent Representative of Israel to the United Nations Office at Geneva and asked to benefit from the cooperation of the Government of Israel with a view to carrying out a visit to Israel and the occupied territories. A letter with similar content was sent to the Permanent Representative of Israel.

9. On 14 November 1995, the Permanent Representative of Israel addressed a letter to the Chairman of the Commission on Human Rights, expressing the serious reservations of the Government of Israel about the Special Rapporteur's mandate. The letter stated that, unlike the mandates of all other "geographical" special rapporteurs, which are on a one-year basis and subject to renewal, the mandate in resolution 1993/2 A was open-ended. The Permanent Representative expressed the view that, at a time when the Middle East peace process was advancing and the Palestinian Authority taking full responsibility for self-government in the West Bank, in addition to Gaza and Jericho, it was inconceivable that the Special Rapporteur's mandate should remain unchanged. In the light of the above, the Special Rapporteur was informed that Israel was not in a position to receive him.

10. The Special Rapporteur regrets the lack of cooperation on part of the Government of Israel regarding his mandate for certain reasons of principle, whereas the objective of the Special Rapporteur is to be helpful in addressing problems whose existence not even Israel denies and suggesting solutions to them by establishing a constructive dialogue with all sides aimed at overcoming them.

11. The Special Rapporteur met with representatives of non-governmental organizations and received written information from Governments, intergovernmental and non-governmental organizations as well as individuals.

12. The Special Rapporteur availed himself of the opportunity afforded when a Palestinian delegation came to the meeting of the World Economic Forum in Davos at the beginning of February 1996 to meet with the President of the Palestinian Authority, Yasser Arafat. On that occasion, Mr. Arafat invited the Special Rapporteur to visit Gaza.

13. Given the proximity of the upcoming session of the Commission on Human Rights, the Special Rapporteur decided to carry out a short visit to Gaza from 2 to 4 March 1996, together with a staff member from the Centre for Human Rights of the United Nations Secretariat.

14. During his visit to Gaza, the Special Rapporteur met with the President of the Palestinian Authority, Mr. Arafat, and discussed issues relating to his mandate. He also availed himself of the opportunity of being in Gaza to acquaint himself with the situation there. The Special Rapporteur met with the Ministers of Economy, Planning and International Cooperation, Health, Labour and Social Affairs of the Palestinian Authority as well as with a number of newly elected members of the Palestinian Council. He also met with the Presidential Adviser on Human Rights as well as with representatives of non-governmental and humanitarian organizations. In addition, the Special Rapporteur met with Mr. Terje Larsen, United Nations Special Coordinator in the Occupied Territories.

15. The Special Rapporteur wishes to express his appreciation to Mr. Arafat and the Palestinian Authority for the cooperation extended to him in the course of the mission.

16. The Special Rapporteur expresses his sincere gratitude to the United Nations Special Coordinator in the Occupied Territories and the staff of his Office for the most efficient logistical and other support provided to the mission at very short notice.

II. PRINCIPAL CONCERNS REGARDING THE SITUATION OF HUMAN RIGHTS

17. As indicated above, the Special Rapporteur was unable to visit Israel and the totality of the Palestinian territories occupied since 1967. Although the Special Rapporteur received valuable information relating to his mandate during the short visit to Gaza, he believes it is not sufficient to write of a comprehensive and balanced report. His report is therefore based not entirely on the type of information that could have been obtained during extensive and detailed first-hand inquiries in the course of a comprehensive visit to the area but to a considerable extent on written and oral information received from Governments as well as intergovernmental, non-governmental and humanitarian organizations. The report is therefore of necessity incomplete in view of the constraints imposed on the Special Rapporteur.

18. The peace process, which began with the signing of the Declaration of Principles in 1993, has brought important political changes in the occupied territories and has enhanced the understanding between Palestinians and Israelis. It has gained further momentum with the recent signing of the Interim Agreement, which includes positive elements as far as human rights are concerned and bodes well for the future. The subsequent elections for the Palestinian Council, as an expression of democracy in action, have been organized on schedule and are considered by the international observers an accurate reflection of the wishes of the Palestinian electorate. Article XIX of the Interim Agreement entitled "Human rights and the rule of law" states that "Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law". The completion of the peace process is the best way to ensure respect for human rights and the rule of law. However, the promotion of human rights and democracy is crucial to the success of the peace process. Guaranteeing these standards should not be viewed as compromising the peace process.

19. Despite the positive developments cited above and the transfer of certain powers and responsibilities to the Palestinian Authority, it ought to be recalled that the Israeli occupation continues to be legally in force during the transition period. Israel therefore continues to be bound by the requirements of humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

20. The Special Rapporteur has visited Gaza and finalized the present report at a particularly difficult time for both Israelis and Palestinians. A series of 4 suicide bomb attacks in Israel (2 in Jerusalem, 1 in Ashkelon and 1 in Tel Aviv) in the space of 9 days has resulted in the death of some 60 persons, while hundreds have been wounded. The Special Rapporteur condemns acts of violence and terror constituting violations of human rights perpetrated by extremists who are adversaries of peace. The Special Rapporteur expresses his

sincere condolences to the families of the innocent victims of criminal terrorist acts. The peace process has led to substantive advances in relations between the Israeli and Palestinian peoples and is a clear manifestation of their desire for peace. Terrorism creates a security situation that undermines the peace process. Acts of terrorism often lead to the adoption of countermeasures that violate human rights and humanitarian law. These measures involve harsh repression and punitive policy against Palestinians living in the occupied territories. When applied indiscriminately to a large portion of the Palestinian population, such countermeasures may lead to an escalation of tension, which in turn may contribute to the strengthening of the position of those who use violence to oppose the peace process. The Special Rapporteur regrets the collective measures taken against the Arab population of the occupied territories in this context. During his visit to Gaza, the Special Rapporteur was able to observe on 4 March 1996 demonstrations against violence and in favour of peace.

21. The following paragraphs contain a brief summary of the principal concerns regarding the situation of human rights in the territories covered by the Special Rapporteur's mandate.

Closure and other measures related to security incidents

22. The first measure imposed on the occupied territories after terrorist incidents in Israel is usually their complete closure, which seals the Gaza Strip and West Bank from each other as well as East Jerusalem and Israel. This policy amounts to collective punishment, in violation of article 33 of the Fourth Geneva Convention of 1949, and results in the severe restriction of the freedom of movement of the inhabitants of the occupied territories. The Special Rapporteur was informed by the Palestinian Authority that, since the transfer of power to the Palestinian Authority in 1994, the Gaza Strip has been subjected to more than 150 days of total closure. Fears have been expressed that the current closure imposed on Gaza on 25 February 1996 may last until the Israeli elections at the end of May. On several occasions, Gaza has been described to the Special Rapporteur as a large prison in such circumstances. It has also been reported that the 465 towns and villages still under Israeli control in the West Bank have been declared closed military areas. The Special Rapporteur was informed that Palestinians required three different permits in order to be able to travel between Gaza and the West Bank. The problem is compounded further by the fact that the arrangements for safe passages between Palestinian autonomous areas foreseen by the peace agreements have not been implemented, although the West Bank and Gaza Strip are considered one territorial unit.

23. The restrictions on the freedom of movement resulting from closures have serious consequences for the health of the population of the occupied territories. Since hospitals in Gaza do not provide tertiary care and lack advanced diagnostic tools, closures affect both patients and health workers. Israeli human rights organizations have requested that special permits be issued for medical personnel. Denial of access to medical services, mostly provided by medical institutions in East Jerusalem, is especially serious for cardiac and cancer patients. The problem of oxygen may also become

particularly acute as there is no oxygen station in Gaza. The Special Rapporteur was informed of the case of a woman who died on 27 February 1996 when the ambulance transporting her out of the Gaza Strip was delayed at the Erez checkpoint for five hours.

24. Closures have a particularly adverse effect on the already fragile economic situation and lead to further deterioration in living conditions, especially in the Gaza Strip. The Special Rapporteur was informed that the losses for the Palestinian economy resulting from the closure may equal or even exceed contributions from donor countries. With every closure, the permits of Palestinian labourers working in Israel are automatically cancelled. Unemployment in the Gaza Strip rises to more than 80 per cent during complete closures. In addition, some 80 per cent of commercial transactions in Gaza involve the Israeli economy. The economic situation was described to the Special Rapporteur as a time bomb.

25. Freedom of education is also affected by the closures. It has been reported, for example, that on 11 March 1996 a senior Israeli Defence Force (IDF) officer ordered all students from Gaza registered at West Bank colleges and universities to report immediately to the Israeli Civil Administration office, following which they would be returned to the Gaza Strip. A number of educational institutions are reported to have been raided and/or closed. The Special Rapporteur was informed that the closure currently imposed on the occupied territories has resulted in the shortage of a number of basic commodities, including food, especially in the Gaza Strip.

26. Closures weaken further the already fragile Palestinian institutions, which are suffering from the adverse effects of the occupation and require the establishment or reconstruction of the civil, political, economic, social and cultural infrastructure. Closures severely disrupt all aspects of the daily lives of Palestinians living under direct Israeli rule and those living in the self-rule areas.

27. The recent suicide bomb attacks in Israel by Palestinian extremists opposed to the peace process have prompted the Israeli authorities to intensify a number of measures against the Palestinian population of the occupied territories that remains under its rule. In addition to the closure, another immediate effect of the security incidents were the mass arrests of persons suspected of affiliation with the Hamas and Islamic Jihad movements, which are believed to be extrajudicial in nature. Arrests have reportedly also been made on the basis of family connections to perpetrators of security attacks. A number of houses belonging to the families of persons who carried out bomb attacks have been sealed and one has been demolished. Other demolitions have been foreseen. Also, a curfew was imposed on the community near Hebron from where two of the suicide bombers originated. It is believed that the recent wave of arrests will entail increased use of administrative detention without charge or trial, whose maximum period was extended in 1995 from six months to one year, renewable. The security concerns of both Israel and the Palestinian Authority have placed overwhelming pressure on the Palestinian Authority to maintain order and the security of both parties in areas under its control. Over 600 arrests are reported to have taken place in

areas under the control of the Palestinian Authority. It has been reported that alleged Islamic activists have been arrested extrajudicially on a massive scale. It has also been reported that the Palestinian Authority has arrested family members of wanted persons who could not be located.

Prisoners and detainees

28. In view of the mass arrests that have been carried out in the wake of the recent suicide bomb attacks in Israel, fears have been expressed that both Israel and the Palestinian Authority may be subjecting detainees to torture and ill-treatment. In Israel, many of the persons arrested are reported to be held incommunicado for long periods, during which secret internal guidelines for interrogation may be applied by the General Security Service (GSS). The Special Rapporteur was informed that GSS systematically uses interrogation methods that constitute torture and ill-treatment. Such methods of interrogation have been described as including sleep deprivation, hooding, beating, position abuse and violent shaking that provokes potentially fatal movements of the head. Since October 1994, these guidelines, which allow for "a moderate measure of physical pressure" as well as psychological pressure, have allowed for harsher interrogation methods. Exceptional dispensations of this nature were prolonged on 22 January 1996. The practices described above violate articles 27 (1), 31 and 32 of the Fourth Geneva Convention. The Special Rapporteur has received disturbing information that persons arrested in the areas controlled by the Palestinian Authority have also been subjected to torture and mistreatment, in contravention of internationally recognized human rights standards. Human rights violations were not denied by the representatives of the Palestinian Authority with whom the Special Rapporteur met. In fact, existing problems were very openly discussed in those meetings.

29. It has been reported that there are currently some 3,500 Palestinian prisoners in Israeli detention facilities. Many have been transferred from prisons in the occupied territories to Israel, in violation of article 49 of the Fourth Geneva Convention. Within the framework of the implementation of the peace agreements between Israel and the PLO, 889 prisoners were released in October 1995 and some 950 were released in January 1996 prior to the elections for the Palestinian Council. However, 29 female prisoners continue to be detained in Israeli detention centres, in contravention of the Interim Agreement. The Special Rapporteur was informed that a large number of those released were common law prisoners and those nearing the end of their sentence.

Land confiscation and settlements

30. The Special Rapporteur's attention was drawn to the continued policy of confiscation of Palestinian-owned land in spite of the peace process and in breach of article 49 of the Fourth Geneva Convention. The expropriated land is used mostly for the expansion of existing Israeli settlements and the building of bypass roads around them, which cantonizes Arab population areas in the occupied territories. The Special Rapporteur was informed that Israel still controls some 40 per cent of land in the Gaza Strip in and around the settlements and the military installations maintained for their protection. The presence of settlements raises tension in the area and leads to outbursts of violence.

III. CONCLUSIONS AND RECOMMENDATIONS

31. The continuation of the peace process is the best guarantee that human rights in the area covered by the Special Rapporteur's mandate will be respected. The Special Rapporteur is of the opinion that he can contribute constructively to the peace process and the establishment of democracy in the areas covered by his mandate by facilitating concrete steps aimed at improving the situation of human rights.

32. A new situation has been engendered by the peace process, where Israelis and Palestinians move from confrontation to reconciliation. Only dialogue can ensure true and lasting peace in the region, for which the cooperation of both parties is essential. Democracy, peaceful relations and respect for human rights and humanitarian law are conducive to the exploitation of the Middle East's development potential that can result in prosperity for all the peoples of the region. Economic development is also essential for political stability and peace.

33. The Special Rapporteur strongly condemns acts of violence aimed at derailing the peace process. The perpetrators of such acts should be condemned by the international community as a whole in no uncertain terms. No one has the right to condone the arbitrary killing of innocent victims, and the Special Rapporteur expresses sympathy with their families. While measures preventing such criminal acts are necessary, so are measures preventing violations of human rights. In addressing their security concerns, Israel and the Palestinian Authority should bear in mind the human rights consequences of their security policy: the measures undertaken have to be compatible with respect for human rights. The halting of terrorism cannot be carried out at the expense of human rights. The terrorist attacks and the measures taken to counter them are no doubt setbacks in this context. Reconciliation is, regrettably, not yet irreversible. A way out of the vicious circle of violence and repression has to be found. Upholding law and order should not in any way replace strict adherence to the rule of law.

34. Israel should reconsider its policy of full-scale closure and other indiscriminate measures amounting to collective punishment imposed on the occupied territories. When applying measures that restrict the enjoyment of human rights, the principles of necessity and proportionality should be taken into consideration.

35. The confidence-building measures described in article XVI of the Interim Agreement, involving the release of Palestinian detainees and prisoners, including women, should be implemented without delay.

36. The use of torture, whether by Israelis or Palestinians, should be absolutely prohibited. Allegations of torture should be investigated by independent judicial organs and those responsible prosecuted. As recommended by the United Nations Committee against Torture, an immediate end should be put to current interrogation practices and all victims of such practices should be granted access to appropriate rehabilitation and compensation

measures. It recommended that interrogation procedures be published in full so that they are both transparent and seen to be consistent with the standards of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

37. All persons placed in administrative detention by the Government of Israel should be brought to a fair trial or released. Trials should be held in conformity with international standards for fairness, with due process safeguards.

38. The confiscation of Palestinian-owned land and the construction or expansion of settlements should be halted immediately.

39. Human rights violations perpetrated in areas under the control of the Palestinian Authority have not been denied by its representatives and have been referred to in discussions. The protection and promotion of human rights is a general responsibility. It is essential that the Special Rapporteur be able to study and report about the situation of human rights in a comprehensive, forward-looking and action-oriented way. The situation on the ground, particularly vis-à-vis the peace process, has to be reflected appropriately in the mandate of the Special Rapporteur. The Special Rapporteur expresses satisfaction that this fact has been understood by the Palestinian Authority, which has promised him full cooperation in reviewing the mandate accordingly. The Special Rapporteur cannot be effective in his work without the full cooperation of the Government of Israel. The responsibility of improving the human rights situation in the West Bank and Gaza Strip lies with both Israel and the Palestinian Authority, which should apply all the principles of human rights and humanitarian law. Israel, as the occupying Power, continues to have special obligations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

40. The Special Rapporteur invites the Commission on Human Rights to consider amending his mandate in accordance with the foregoing.

41. In view of the complexity of applicable laws in areas under the Palestinian Authority, it would be important that the international legal standards enshrined in international human rights instruments be incorporated into domestic legislation by the newly elected Palestinian Council.

42. The complex situation in the Middle East highlights the need for the establishment of a new human rights culture. Human rights are an integral part of democracy and development as well as of peace and security. Broadening the awareness and understanding of human rights is a major task, particularly in times of high tension and deep suspicion. There is no alternative, however. Without respect for human rights, there can be no lasting peace, no sustainable development or democracy. The Centre for Human Rights and the Special Rapporteur are prepared to make their contribution, together with other organizations and partners. Donor countries and agencies have responded commendably in supporting the peace process. This process is now challenged in an unprecedented way and it is in need of all the support it can obtain. The United Nations Special Coordinator in the Occupied

Territories and his Office are doing admirable work in mobilizing and organizing international support for Palestinians. The Centre for Human Rights should accelerate the implementation of programmes of advisory services and technical assistance to complement the work of the Special Coordinator.

43. Exceptional circumstances require new approaches. Instead of repeating accusations over and over again, an attempt should be made to create a concrete, action-oriented human rights strategy for the Palestinian territories. This would require the support of all partners and in particular the full participation of both Israel and the Palestinian Authority. The fact needs to be stated that there are violations of human rights by both sides. It appears indispensable that the role of the Special Rapporteur be reviewed so as to enable him to make a more action-oriented contribution to the protection and promotion of human rights in the area. This would entail addressing human rights problems in a comprehensive and integrated manner with a view to finding the most effective ways and means to prevent their escalation and to advance overall respect for human rights.